

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ODIS EDWARDS, #57891-177, MOVANT, V. UNITED STATES OF AMERICA, RESPONDENT.	§ § § § § § § § §	CASE NO. 3:19-CV-2597-N-BK (CRIMINAL NO. 3:18-CR-576-N-1)
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**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to [28 U.S.C. § 636\(b\)](#) and *Special Order 3*, Movant Odis Edwards’ *pro se* motion to vacate, set aside, or correct sentence under [28 U.S.C. § 2255](#) was referred to the undersigned United States magistrate judge for case management, including the issuance of findings and a recommended disposition. As detailed herein, the motion should be summarily **DISMISSED WITH PREJUDICE**.¹

In January 2019, Edwards pled guilty to conspiracy to commit access device fraud and, on April 19, 2019, was sentenced to 58 months’ imprisonment and a two-year term of supervised release. [Crim. Doc. 38](#). Edwards did not pursue a direct appeal, but subsequently filed this timely section 2255 motion on October 31, 2019. [Doc. 2](#). In his sole two grounds, he asserts that he should not have received sentencing enhancements for a “leadership role” or the utilization of “sophisticated means” under [U.S. Sentencing Guidelines Manual \(U.S.S.G.\) §](#)


¹ See Rule 4(b) of the RULES GOVERNING SECTION 2255 PROCEEDINGS (“If it plainly appears from the motion and any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party.”).

2B1.1(b)(10)(c) and § 3B1.1(a). Doc. 2 at 5; see also Crim. Doc. 30-1 at 12, Presentence Report ¶¶ 34 and 37. However, Edwards' objections to the calculation of the sentencing guidelines are not cognizable in a Section 2255.

After conviction and exhaustion or waiver of the right to direct appeal, the court presumes that a petitioner stands fairly and finally convicted. See *United States v. Cervantes*, 132 F.3d 1106, 1109 (5th Cir. 1998) (citing *United States v. Shaid*, 937 F.2d 228, 231-32 (5th Cir. 1991) (en banc)). "Section 2255 motions may raise only constitutional errors and other injuries that could not have been raised on direct appeal that will result in a miscarriage of justice if left unaddressed. Misapplications of the Sentencing Guidelines fall into neither category and hence are not cognizable in Section 2255 motions. *United States v. Williamson*, 183 F.3d 458, 462 (5th Cir. 1999) (misapplication of sentencing guidelines does not give rise to a constitutional issue cognizable under Section 2255 (citing *United States v. Segler*, 37 F.3d 1131, 1134 (5th Cir. 1994); *United States v. Faubion*, 19 F.3d 226, 233 (5th Cir. 1994))).

Because Edwards' challenge to the application of the Sentencing Guidelines is not cognizable in a Section 2255 motion, the motion to vacate sentence under 28 U.S.C. § 2255 should be summarily **DISMISSED WITH PREJUDICE**. See Rule 4(b) of the RULES GOVERNING SECTION 2255 PROCEEDINGS.

SO RECOMMENDED on November 12, 2019.



RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). An objection must identify the finding or recommendation to which objection is made, the basis for the objection, and the place in the magistrate judge's report and recommendation the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996), *modified by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections to 14 days).